UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/784
21 November 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 784

Case No. 861: KNOWLES

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mayer Gabay; Ms. Deborah Taylor Ashford;

Whereas, at the request of Raymond R. Knowles, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended the time-limit for the filing of an application to the Tribunal until 31 December 1994, 31 March and 31 July 1995;

Whereas, on 17 May 1995, the Applicant filed an application containing pleas which read, in part, as follows:

> "4. ... [his] ... classification appeal filed on 24 August 1988 had not been considered by the Classification Appeals and Review Committee until June 1994. ...
>
> ...
>
> 6. ... The Applicant ... requests the Tribunal to hold that, regardless of the merits of his classification appeal, his rights as a staff member have been seriously violated by the failure of the Classification Appeals and Review Committee to hear his appeal for over five years. The Applicant respectfully requests the Tribunal to award him equitable compensation for the long delay in hearing his classification appeal in recognition of the fact that, because of the excellence of his performance, he was kept in the post under appeal for nine years and not allowed to transfer to a post which would have allowed advancement to the P-5 level.

...

9. ... the Applicant reiterates the plea ... that his post be reclassified to the P-5 level retroactively to the date of his appeal and that he be awarded equitable compensation for the violation of his contractual rights, a violation which had seriously impaired his prospects for promotion over a prolonged period of time.

10. In addition, the Applicant respectfully draws the attention of the Tribunal [to certain annexes to his application] ... which show that on 14 November 1989, the then Assistant Secretary-General for Human Resources Management, an ex-officio member of the APB [Appointment and Promotion Board], in spite of the pendency of the Applicant's classification appeal, advised the Chairman of the Appointment and Promotion Board that the Applicant's claim to reclassification of his post and to promotion to the P-5 level were without merit (...). Although the Applicant in his appeal to the Joint Appeals Board pleaded that the memorandum of the ASG [Assistant Secretary-General] (...) constituted improper and arbitrary action and an abuse of power, the JAB's report (...) gave no consideration to that aspect of the Applicant's appeal. The Applicant, therefore, respectfully requests the Tribunal to do so. ... The Applicant maintains that as a result of the ASG's memorandum to the APB, his recourse for promotion did not receive the fair and objective consideration to which he was entitled according to the applicable rules and procedures and that as a result he was denied an opportunity for advancement. In fact, the Applicant subsequently learned that the APB was favourably disposed to his recourse, but upon receiving the memorandum of the ASG (...) decided not to add his name to the P-5 promotion roster.

...

14. Applicant respectfully requests the Tribunal to ... award the Applicant an appropriate amount of compensation, representing the difference between the salary and allowances he actually received and the salary and allowances he would have received, as well as the difference in pension benefits, had the Assistant Secretary-General for Human Resources not destroyed with an untrue statement (...) any chance of success that his recourse to the APB in 1989 may have had, and recourses in subsequent years as well. ... The total compensation requested is US$ 132,000.

...

26. In the matter of the Compensation and Classification Service classification of his post, the Applicant respectfully requests the Administrative Tribunal to determine that the Service erred in the manner in which it analysed the Applicant's post, to recognize the impact of that error on the career prospects of the Applicant and to establish and award to him compensation for lost benefits to include salary, entitlements and future pension benefits, in recognition of the failure of the Compensation and Classification Service to properly classify his post.

..."

Whereas the Respondent filed his answer on 15 June 1995;

Whereas the Applicant filed written observations on 15 August 1995;

Whereas the Applicant filed additional documents with the Tribunal on 11 October 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 10 March 1969, on a three-month fixed-term contract, as a Technical Editor in the Reports and Documentation Section, in the Office of Technical Cooperation (OTC), Department of Economic and Social Affairs, at the P-3, step I level. His fixed-term appointment was extended successively through 30 June 1975. On 5 February 1973, the Applicant's functional title was changed to Programme Management Officer and he was reassigned within OTC to the Africa Branch, Physical Resources Projects Section. On 1 July 1975, he was given a probationary appointment. On 15 September 1975, the Applicant was reassigned, within OTC, to the Middle East, Mediterranean Europe and Interregional Projects Branch, Regional and Interregional Projects Section. On 1 April 1976, his appointment was made permanent and on 1 April 1978, he was transferred to the Department of Technical Cooperation for Development (DTCD). On 1 April 1979, he was promoted to the P-4 level. With effect from 1 July 1979, the Applicant was reassigned to the Middle East Section. On 10 February 1982, his functional title was changed to Economic Affairs Officer.

On 9 May 1984, DTCD submitted to the Compensation and Classification Service (CCS) a job description for post number UA-07460-E-P-4-006, "Economic Affairs Officer", encumbered by the Applicant. The post was reclassified by the CCS on 26 June 1984, as "Information Officer", at the P-4 level.

On 18 August 1984, the Applicant submitted to the Assistant Secretary-General, Office of Human Resources Management (OHRM), a request for the reclassification of his post to the P-5 level. On 29 August 1984, the Applicant was advised by the CCS that it had agreed to change the title of the post from "Information Officer" to "Publication Officer" in the occupational group of Editor. The Applicant was further advised that if he did not agree that his post was properly classified at the P-4 level, his case would be transmitted to the Classification Appeals and Review Committee (CARC). On 10 September 1984, the Applicant requested the CCS to forward his appeal to the CARC.

On 26 February 1985, the Applicant was informed by the Assistant Secretary-General, Personnel Services, that the CARC had completed its review of his classification appeal and had concluded that his post should remain classified at the P-4 level.

On 3 June 1988, DTCD submitted to the CCS a revised job description of the Applicant's P-4 post "Publication Officer", with the request that it be reclassified, since the previous job description had not adequately reflected the duties and responsibilities of the incumbent. DTCD noted that, in the publication field, those duties and responsibilities could be equated to those of a Managing Editor.

On 14 June 1988, the CCS again classified the post at the P-4 level and did not change its functional title.

In a communication dated 24 August 1988 to the Assistant Secretary-General, OHRM, the Applicant appealed the classification of his post at the P-4 level, based on a comparison of his job with that of Editor, United Nations Chronicle, Department of Public Information (DPI), which was classified at the P-5 level. In a

reply dated 20 October 1988, the Assistant Secretary-General, OHRM, informed the Applicant that "[his] second appeal against the classification decision, ha[d] been referred to the Classification Appeals and Review Committee".

On 19 December 1988, the Applicant asked for an administrative review of the classification of his post in accordance with staff rule 111.2. By memorandum dated 22 December 1988, the Assistant Secretary-General, OHRM, informed the Applicant that the Chairperson of the CARC would schedule his appeal hearing as soon as the backlog of outstanding appeals had been eliminated.

On 1 November 1989, the Chairman of the Appointment and Promotion Board (APB) advised the Assistant Secretary-General, OHRM, that it had been brought to the APB's attention that the Applicant was performing functions that were very similar to functions performed by the Editor-in-Chief, DPI. He requested OHRM to review this matter.

On 14 December 1989, the Assistant Secretary-General explained to the Chairman of the APB, that the CARC had determined that the Applicant did not have the same programme responsibilities as the Editor in the DPI post, despite an apparent similarity of functions. The Assistant Secretary-General, OHRM, stated that "we are, ..., as a rule, avoiding to determine the grading of a post solely by reference to other posts, particularly those with similar programme responsibilities, as such an approach would produce inconsistent results."

On 11 February 1992, the Applicant wrote to the Assistant Secretary-General, OHRM, requesting permission to examine the Classification Unit's file concerning his classification appeal.

Not having received a reply, on 14 April 1992, the Applicant wrote again to the Assistant Secretary-General, OHRM, requesting that the latter initiate the reclassification of his post to the P-5 level.

On 13 May 1992, the Assistant Secretary-General, OHRM, replied that since the backlog of outstanding appeals had been

eliminated, the Applicant's appeal would be scheduled for review when the new membership of the CARC was finalized.

On 23 July 1993, the Applicant wrote to the Secretary-General requesting administrative review of "the continuing failure of the Classification Appeals and Review Committee, ..., to review the classification appeal which I submitted to it in 1988, almost five years ago, requesting classification of my post to the P-5 level."

On 14 October 1993, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

The CARC submitted its report on 5 July 1994. It concluded that "the functions of the post correspond to the P-4 level. Therefore, the Committee recommends that the classification decision of 14 June 1988, with respect to the post, be maintained". On 7 July 1994, the Director of Personnel, OHRM, transmitted to the Applicant a copy of the CARC's report and notified the Applicant that she accepted the CARC's recommendation of 5 July 1994.

The JAB adopted its report on 1 September 1994. Its considerations and recommendations read, in part, as follows:

> "...
>
> 35. The Panel carefully examined the Respondent's explanations for the delay. It took note of the Respondent's statement, namely, that 'unfortunately, inadequate resources for the enormous size of the work Programme made such prompt consideration impossible. It is regrettable that the Appellant's appeal was not disposed of before the membership of the CARC expired, but the heavy task of the CCS in handling its work Programme prevented the preparation of the CCS's submission in the appellant's case and the subsequent consideration by the CARC, in the course of the review process.
>
> 36. The Panel, however, had expected that the Administration would act more expeditiously in reviewing the reclassification cases by the CARC so that a staff member would not have to wait such a long time. Nevertheless, the Panel noted that the record demonstrates that there were no improper, arbitrary actions constituting an abuse of power on the part of the Administration.

37. The Panel, therefore, adhered to the Tribunal's jurisprudence that it will not award compensation to an Appellant for delay unless he proves that he has suffered injury as a result. The Panel noted that in this case, the Appellant's situation has not been affected by the delay.

38. The Panel took note of the Respondent's statement that the membership of the new CARC was announced on 17 September 1993, in ST/IC/1993/51. The Panel expects the Appellant's appeal will be dealt with promptly and be given full priority.

39. The Panel made no other recommendation."

On 4 October 1994, the Under-Secretary-General for Administration and Management notified the Applicant as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Board's finding that there were no improper or arbitrary actions constituting an abuse of power on the part of the Administration and that the Board made no recommendation in support of your claim for compensation since, in its view, your situation had not been affected by the delay. The Secretary-General therefore agrees with the Board's findings and recommendation."

On 17 May 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The appeal process was unacceptably slow. This undermined his right to appeal an administrative decision, which is an integral and essential part of his rights as a staff member, and he should be compensated for this delay.

2. The recommendation of the CARC that the Applicant's post be classified at the P-4 level violated his contractual rights to have his post properly classified. The Applicant should be awarded equitable compensation for this violation.

Whereas the Respondent's principal contentions are:

1. Delay in the finalization of the Applicant's classification appeal caused him no loss. Thus, the decision not to award him compensation did not violate his rights.

2. The Applicant's appeal against the classification of his post was properly considered by the CARC which accorded the Applicant due process.

3. The CARC delivered a reasoned recommendation, the acceptance of which did not violate the Applicant's rights.

4. The Applicant has not discharged the onus placed upon him to establish prejudice or improper motive.

The Tribunal, having deliberated from 29 October to 21 November 1996, now pronounces the following judgement:

I. The Applicant's claim is twofold. The Applicant appeals from a decision of the Respondent dated 4 October 1994. That decision adopted a unanimous Joint Appeals Board (JAB) recommendation that no further action be taken with respect to the Applicant's challenge to the action of the Administration in maintaining his P-4 grade level. The Applicant argues that the handling of his appeal against the classification of his post which was filed on 24 August 1988 and heard by the Classification Appeals and Review Committee (CARC) only in June 1994, was unacceptably slow and that he should be compensated for this delay. His second claim deals with the classification of the post itself. He argues that the CARC's recommendation that his post be classified at the P-4 level was not correct. In addition, due to the long delay, the CARC had by default, forfeited its rights to oppose the Applicant's claim for reclassification of his post to the P-5 level. The Applicant further claims that, in its analysis, the CARC applied more

stringent standards to the Applicant's post. In so doing, the CARC exceeded its authority and used improper means to deny the Applicant the correct classification of his post.

The Applicant also asserts that a memorandum written on 14 November 1989, by the Assistant Secretary-General for Human Resources Management (ASG/OHRM), advising the Chairman of the Appointment and Promotion Board (APB) that the Applicant's claim to the P-5 classification post was without merit, constituted improper and arbitrary action and an abuse of power.

II. The first issue before the Tribunal is whether the Respondent's decision to accept a JAB recommendation not to award damages for excessive delay in the hearing of the Applicant's classification appeal violated his rights. The second issue is whether the decision of the Respondent to accept the CARC's recommendation not to change the classification of the Applicant's post was vitiated by improper motives, thereby violating the Applicant's rights.

III. The Respondent in his answer argues that, since the Applicant's post was not reclassified, he did not sustain loss and, consequently, he is not entitled to compensation.

IV. In reviewing its jurisprudence concerning the issue of delay, the Tribunal recalls Judgement No. 414, Apete (1988) in which it held that the applicant was entitled to compensation for unconscionable delays caused by the Respondent in the administration of justice. In so doing, the Tribunal adopted its findings in Judgement No. 353, El-Bolkany (1985), in which it stated that an inordinate delay not only adversely affects the administration of justice, but on occasions can inflict unnecessary anxiety and suffering on an applicant.

Again, in Apete, the Tribunal held that "no extreme burden of work sustained by the representative of the Respondent can excuse such an unconscionable delay of almost three years, merely for the preparation of a rebuttal. Nor can the Tribunal subscribe to the contention that there is no proof of fault on the part of ... in causing the delay."

V. In the present case, it is the Tribunal's view that the Administration denied the Applicant due process in taking so long to consider his appeal. As pointed out by the JAB, all staff members are entitled to a prompt resolution of disputes. Although the Tribunal is fully aware of the Administration's problems arising from the inadequacy of resources, which resulted in this delay, this does not absolve it of its responsibility to hear appeals in an expeditious manner.

Due to the delay, the Applicant was left in great uncertainty as to his career and he was inhibited from taking steps which might have advanced his position in the Organisation. He is entitled to compensation for the general injury and anxiety which he has suffered.

VI. The Tribunal now turns to the issue of the classification of the post. The Tribunal does not have the authority to interfere with job classification matters. Its role is limited to determining whether improper motives, prejudice or arbitrariness have vitiated the contested decision. The Applicant contends that the CARC applied, in certain instances, more stringent definitions than those contained in the International Civil Service Commission Master Standard. Concurrently, he argues that the doctrine of laches applies to his case. The Tribunal will deal with the latter argument first. As correctly pointed out by the Respondent in his answer before the JAB, the equitable doctrine of laches applies when a party claiming an injury fails to initiate a legal proceeding

within a reasonable period of time. If the party waits too long to assert his or her rights, the claim will be considered time barred. The Applicant did not invoke this doctrine correctly. Therefore, the Tribunal concludes that "laches" cannot be raised against the CARC to compel reclassification of the Applicant's post to the P-5 level.

VII. With respect to the claim that the CARC did not properly evaluate the Applicant's work record, the Tribunal does not find that this was the case. Having reviewed all the material before the Tribunal, it appears that the CARC did take into account the Applicant's arguments. The Respondent's acceptance of the CARC's recommendation does not constitute a violation of the Applicant's rights. The Tribunal finds that the conclusions of the CARC were reached after hearing both parties and were presented in a reasoned report.

VIII. The Tribunal notes the Applicant's excellent work record. Nonetheless, it has been constantly held by the Tribunal that a staff member has no right to reclassification of his or her post, but only a right to request the reclassification of such post. Qualifications, experience, favourable performance reports and seniority are appraised freely by the Secretary-General and therefore cannot be considered by staff members as giving rise to any expectation (Judgement No. 312, Roberts (1983)). The Tribunal has long recognized the wide discretion of the Secretary-General in classification matters (Judgements No. 396, Waldegrave (1987) and No. 597, Colayco (1993)).

IX. It is for the person alleging improper motivation or arbitrariness to produce convincing evidence in support of these allegations. The Tribunal cannot find any proof to support the Applicant's allegations that he was not given a fair hearing. The

Tribunal accepts the Respondent's contention that the CARC is entitled, on an ex parte basis, to obtain technical advice not related to the substantial issues before it. Lastly, the Tribunal is unable to find any evidence of prejudice regarding the 14 November 1989 memorandum by the ASG/OHRM. The memorandum states the ASG/OHRM's conclusions after he reviewed the Applicant's case. The fact that he believed that the Applicant's case was without merit and transmitted his opinion to the Chairman of the APB cannot be viewed as improper influence and does not constitute prejudice. With respect to these allegations, the Tribunal can only conclude that the Applicant has not sustained his burden of proving arbitrary action or abuse of power on the part of the Respondent.

X. For the foregoing reasons, the Tribunal decides that:

1. The Respondent shall pay US$10,000 to the Applicant for the moral injury he sustained due to the unreasonable delay in dealing with his case.

2. All other pleas are rejected.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mayer GABAY
Member

Deborah Taylor ASHFORD
Member

New York, 21 November 1996

R. Maria VICIEN-MILBURN
Executive Secretary